

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

**GERALD SUBARU, INC. d/b/a GERALD KIA
OF NAPERVILLE¹**

Employer

and

Case 13-UC-409

**AUTOMOBILE MECHANICS LOCAL 701,
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO**

Petitioner

DECISION AND ORDER CLARIFYING UNIT

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on January 8, 2008 before a hearing officer of the National Labor Relations Board, herein referred to as the Board.²

I. Issues

The Petitioner seeks to clarify an existing bargaining unit currently comprised of journeyman technicians, body shop technicians, apprentices, lube rack technicians, and semi-skilled technicians, who service and repair Subaru vehicles, to include three technicians who began working at the Employer's facility following Gerald Subaru, Inc.'s acquisition of a Kia franchise in June 2007.³ The Petitioner argues the Kia technicians share an overwhelming community of

¹ The names of the parties appear as stipulated to at the hearing.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

³ Although the Stipulation agreed to by the parties in advance of the hearing (Board Exhibit 2) also contains "body shop technicians" in the list of classifications the Petitioner was seeking to include, the parties at hearing agreed that there were no Kia body shop technicians currently working for the Employer and that the instant petition only sought clarification with regard to the inclusion of Kia technicians. These individuals, as the record made clear,

interest with the employees in the existing unit thereby mandating their accretion to the Unit. The Employer contends that the Kia technicians should not be accreted to the existing bargaining unit because there is no interchange of duties between or common supervision of these technicians and the employees in the unit.

II. Decision

Because the Kia technicians share an overwhelming community of interest with the pre-existing bargaining unit of Subaru technicians, and have little or no separate identity apart from the existing unit, the Kia technicians must be accreted to that unit. *Progressive Service Die Co.*, 323 NLRB 183 (1997); *Massey-Ferguson, Inc.*, 202 NLRB 193 (1973). Specifically, Kia technicians and current bargaining unit employees work side-by-side on a daily basis from the identical physical location to complete similar vehicle service and repair jobs; share common overall supervision; use similar skills as well as share tools and equipment when performing that work; and their working conditions, including work shifts, computation of work hours, and manner of being paid all are comparable. Accordingly, IT IS HEREBY ORDERED that the existing unit be clarified as follows:

All full-time and regular part-time Subaru and Kia journeymen technicians, body shop technicians, apprentices, lube-rack technicians, and semi-skilled technicians employed by the Employer at its facility located at 1210 E. Ogden Avenue, Naperville, IL; but excluding all office clerical employees and guards, professional employees, and supervisors.

III. Statement of Facts

The Board defines its doctrine of accretion as “the addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity.” *Progressive Service*, supra. Determining the appropriateness of an accretion requires the balancing of factors to determine if the employees share a sufficient community of interest to be accreted, which include: geographic proximity; physical contact among employees; integration of operations; centralized control of management and labor relations; similarity of terms and conditions of employment; similarity of skills and functions; employee interchange; supervision; and collective bargaining history. *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001); *Progressive Service*, supra at 186. The Petitioner’s request to add Kia technicians to its existing bargaining unit of Subaru technicians likewise requires the balancing of these factors.

The Employer’s Operations:

The Employer operates an automobile dealership at 1210 E. Ogden Avenue in Naperville, Illinois from which it sells and services the Subaru brand. The Employer and the Petitioner are parties to a collective bargaining agreement effective August 1, 2005 through July 31, 2009.

perform service and repair work. The Employer currently employs one body shop technician who is a member of the existing bargaining unit who performs body repair work on all vehicles, including Subarus and Kias.

Pursuant to that agreement, the Petitioner represents a bargaining unit that includes journeymen technicians, body shop technicians, apprentices, lube-rack technicians, and semi-skilled technicians (collectively referred to as the “Subaru technicians”).⁴ At the time of the hearing, the Employer employed six technicians in these job classifications. The Employer previously sold Oldsmobile vehicles until the demise of that brand resulted in the end of the Employer’s franchise in October 2005. In June 2007, the Employer purchased a Kia franchise from another dealership to replace its Oldsmobile franchise and began operating it at the same address and in the same physical location as its Subaru franchise. The Employer hired three additional technicians, one each in June, July, and August 2007, to handle the servicing and repair of Kia vehicles. Two of those technicians were transferred to the Employer from the dealership which previously owned the Kia franchise. Those technicians were not represented by any labor organization. The parties have no history of collective bargaining regarding the Kia technicians.

Supervision:

At the Naperville facility, the Employer operates a parts and service department to service and repair vehicles, including Subaru's, Kia's, and other vehicles. Larry Hawes is the parts & service department director. John Kainz, the service manager, and Ed Sirott, the body shop manager, report to Hawes. Kainz oversees all technicians, as well as their three team service managers (“TSMs”). The TSMs oversee each of the three teams of technicians. Bob Laster is the team service manager for three Subaru technicians; Jason Miler is the team service manager for the other three Subaru technicians; and Adrian Ayale is the team service manager for all three Kia technicians. Labor relations issues that arise under the collective bargaining agreement are addressed by Hawes, Kainz, or Sirott, not the TSMs.

Hawes and Kainz have ultimate responsibility for hiring all technicians. In this regard, while both TSMs and current technicians are solicited for any recommendations they may have when the Employer wants to employ a new technician, once such a candidate is identified, they must interview with Hawes and Kainz. Although Hawes testified that he would not hire any technician if the recommending TSM did not approve, he does not invite the TSM for whom the technician would work into the interview until after both Hawes and Kainz interview the individual and find the person desirable for hire.

Geographic Proximity/Interchange/Employee Contact and Integration of Operations:

The parts & service department consists of separate work areas for the service department, paint department, parts department, and body shop. The service department is one large, open space where all the technicians service and repair vehicles. The area contains a vehicle bay for each technician that houses a hydraulic vehicle lift. The area also contains open bays which may be used by any technician if needed and available; both Subaru and Kia technicians have used these shared bays on occasion. The parts department is adjacent to the service department, and both Subaru and Kia technicians obtain parts for repairs from the same individual working in

⁴ Article 1, Union Recognition, Section 1, Bargaining Unit, states: The Employer recognizes the Union as the exclusive bargaining agent for all of its Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, and semi-skilled technicians. Article 2 of the contract contains a detailed description of the work that each of these job classifications performs.

that department. The body shop is also adjacent to the service department, with bargaining unit employee Tim Lepenske completing repairs to vehicles damaged in accidents, whether they be Subarus, Kias, or another brand. Likewise, the paint department completes painting jobs on all types of vehicles.

The dealership follows a standard procedure for assigning service and repair work to technicians, both Subaru and Kia. When a customer arrives at the facility for vehicle service or repair, one of the TSMs writes up a service ticket. If a vehicle is a Subaru, one of the TSMs will assign it to a Subaru technician; likewise, the TSM assigns a Kia vehicle repair to one of the Kia technicians. The separation of work by car brand is due to the fact that any repair covered by a manufacturer's warranty must be completed by a technician certified to repair the particular vehicle brand. Thus, Kia technicians must be certified through Kia's university and use Kia-specific tools if the dealership is to be compensated by the manufacturer for vehicle service or repair covered by the manufacturer's warranty. Roughly 80 percent of the Kia technicians' work currently is warranty work, whereas that figure is approximately 35-40 percent for Subaru technicians. If a customer brings in a vehicle other than a Subaru or Kia, it typically is assigned to one of the Subaru teams based upon whether the last digit of the vehicle identification number is odd or even. However, Kia technicians work on other vehicles as well, including Hyundai's due to their similarity to Kias, or any vehicle brought in by a customer who requests a specific Kia technician to repair the vehicle. Each TSM assigns work based on the number of jobs and technicians present on a given day. When one of the TSMs is absent, Kainz, as the service manager who oversees all technicians and TSMs, will assume the responsibility for assigning work to that TSM's technicians. On occasion, TSMs have assigned jobs to technicians on other teams when the regular TSM was working but otherwise unavailable.

Job Skills and Duties:

The Subaru technicians and Kia technicians perform similar functions for the vehicles that they repair, including inspections, alignments, transmission flushes and repairs, ignition repairs, emissions corrections, and oil changes. When a customer complains that a vehicle is not running properly, the technicians will scan the vehicle's computer system to look for codes identifying a problem. Although different scanners are used for Subaru and Kia cars, other testing equipment used to identify drivability problems is shared by the two groups of technicians. This includes those for fuel pressure, cylinder balance, fuel injectors, and digital volt readings. The technicians also share equipment used for wheel alignments, transmission flushes, and brakes, as well as the same computer to conduct research on their service and repair jobs. To complete their work, all technicians use wrenches, screwdrivers, sockets, ratchets, hammers, chisels, sponges, air tools, nuts, bolts, washers, and fasteners. The hand tools in this group are owned, maintained, and updated annually by each individual technician at their personal expense. Certain of the tools are specific to the Subaru or Kia brand; each technician also may need tools specific to a particular vehicle within each brand.

Working Conditions:

Working for the same employer at the same location, Subaru technicians and Kia technicians have many similarities in their working conditions. Both Subaru technicians and Kia tech-

nicians are paid a wage rate by the hour, with the former group's rate set by the collective bargaining agreement and varying by job classification. The number of hours worked in a week is determined by a flat rate per job; that is the number of hours that each car manufacturer deems the repair should take for warranty work or that is the industry standard for a repair paid for by the customer. The actual hours it takes for the technician to complete the repair does not factor into this determination. The only difference in the manner of wage payment between Subaru and Kia technicians is that the latter pool their hours for a week and then divide the total by three to determine their weekly pay. Each Subaru technician is paid based solely on that individual's hours. Two Subaru technicians did try the pooling setup for some time in 2007, but they ceased the practice two weeks before the hearing. Other Subaru technicians have not pooled their hours. The dealership charges customers the same hourly labor rate, \$106, irrespective of whether the car serviced is a Subaru or Kia. Subaru technicians work two different shifts, either 7:00 a.m. to 4:00 p.m. or 9:00 a.m. to 6:00 p.m., while Kia technicians all work from 8:00 a.m. to 5:00 p.m., Monday through Friday. When technicians need time off from work, they must ask their respective TSM. If a technician's TSM is unavailable, Kainz approves the time off request. All employees park in the same lot and share a common lunch room and locker room.

Training:

Subaru and Kia technicians receive a variety of training, some overlapping and some particular to the brand. Any technician can take a national testing program for special areas of vehicle repair not specific to a particular manufacturer in order to receive an Automotive Service of Excellence (ASE) certification. It is not clear from the record how many of the Subaru or Kia technicians have this certification, although some do. As noted above, Subaru and Kia technicians must be trained on how to perform warranty repairs specific to each vehicle brand. Finally, all service department employees, including Subaru and Kia technicians, attend general shop and workplace safety training together at the Employer's facility.

IV. Legal Analysis

As the factual description above makes clear, the factors favoring accretion of the Kia technicians to the bargaining unit of Subaru technicians substantially outweigh those that suggest accretion is not proper. With respect to geographic proximity, the Employer operates its Subaru and Kia dealerships out of the same physical location at 1210 E. Ogden Avenue in Naperville. The Kia technicians have been fully integrated into the work area of the Subaru technicians in the service department and work side-by-side with them on a daily basis. The service bays where they work are open and next to one another. Because each technician is assigned his own service bay and performs his own service and repairs of vehicles, including each of the Subaru technicians in the existing unit, there is no manner in which the Kia technicians could be physically closer to Subaru technicians. The type of work performed by the technicians—inspections, alignments, transmission flushes and repairs, ignition repairs, emissions corrections, and oil changes—is done on all vehicles irrespective of brand. The tools and skills they use to complete these tasks are essentially identical, with much of the equipment shared and differences due only to the intricacies of a brand or a vehicle within the brand. Technicians obtain any needed parts for their work from the same parts department located next to the service department. The body and paint shops service both Subarus and Kias. All technicians work the same days with similar

shifts. Their work hours for pay purposes are computed in the same fashion and are billed out in the same fashion. Both groups have used the pooling of hours at times to determine each individual technician's pay. They share common areas such as the parking lot, locker room, and lunch room. Much of their training, except that for the specific brand they work on, overlaps. Control of labor relations and central management with respect to the technicians resides with Hawes, the parts & service director, or Kainz, the service manager, not the individual TSMs. As a practical matter, Hawes and Kainz are responsible for the hiring of all technicians. They do not introduce subordinate TSMs to a candidate until after they have decided they want to hire the person, making TSM approval of the individual a mere rubber stamp. This multitude of factors showing an overwhelming community of interest between Subaru technicians and Kia technicians warrants an accretion. *Progressive Service*, 323 NLRB at 186 (adopting ALJ decision that employer violated Section 8(a)(5) by refusing to recognize union as representative of employee working on a newly acquired machine, and that accretion was proper due to, among other things, functional integration, geographic proximity, and common working conditions); *Massey-Ferguson*, 202 NLRB at 194 (1973) (finding accretion proper where employer transferred into its Detroit facility a department of technical and clerical employees into existing technical and clerical unit due in part to the employees working in a single large work area together, having common overall supervision, using the same office supplies and blueprint department, working the same hours, and utilizing the same parking lot and cafeteria).

In arguing against accretion in this matter the Employer principally relies upon the Board's decision in *Towne Ford Sales*, 270 NLRB 311 (1984), maintaining that the lack of interchange of duties and responsibilities as well as the lack of common day-to-day supervision are sufficient to override the other substantial factors favoring accretion. However, *Towne Ford* is distinguishable from the instant case in two critical aspects. In *Towne Ford*, the Board found that the accretion of mechanics working for a newly-opened Mitsubishi dealership into an existing unit of Ford mechanics of the same employer was not proper, where the two groups of mechanics operated at different physical locations across the street from one another. The lack of geographic proximity meant that the two groups of mechanics did not have any day-to-day contact with one another and thus lacked interchange. In addition, the distinct physical location of the facilities resulted in daily operations that were separate and autonomous, with the service manager at each physical location handling hiring and the assignment of work.

Such is not the case in the instant situation. Thus, the daily operations of Subaru and Kia technicians are not separate and autonomous as was the case in *Towne Ford*. In regard to supervision, while each of the three teams of technicians report directly to a different TSM, this fact standing alone does not render accretion of the Kia techs to the existing unit inappropriate inasmuch as each of the TSMs operate in the same physical location, occasionally cover for one another, and report to and are overseen by Service Manager Kainz. Significantly, unlike the managers in *Towne Ford*, none of the TSMs have the authority to hire technicians for their respective teams. Rather, that responsibility is centralized with Hawes and Kainz.

Based upon the foregoing, the Kia technicians must be accreted into the existing bargaining unit of Subaru technicians because they share an overwhelming community of interest and do not have a separate and distinct identity.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by February 29, 2008.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 15th day of February, 2008.

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CATS — UC Petition – Accretion Issues; Other Issues

Blue Book 385-7533-2040-0000

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